

REMARKS

According to the Office Action, the invention is divided into a total of six groups. Applicants elect Group I (drawn to an antibody, hybridoma, peptides derived from said antibody, vaccines or compositions containing said antibody or peptide and kits) with traverse, for the reasons provided below. Applicants expressly reserve the right under 35 U.S.C. §121 to file one or more divisional applications directed to the nonelected subject matter during the pendency of this application.

Applicants traverse the division between Groups I, IV, V and VI. These claims should be considered together in accordance the Patent Office's own guidelines as exemplified in "Training Materials for Treatment of Product and Process Claims in Light of *In re Brouwer* and *In re Ochiai* and 35 U.S.C. 103(b)", dated July 26, 1996. This document indicates that claims to method of making or using an allowed product are also allowable without reopening substantive prosecution, providing they are supported in the specification and contain all the limitations of the product. In this case, both of these requirements have been met. That the Office has a policy that states that these claims may be allowed *without re-opening substantive prosecution* clearly indicates that these claims should not be restricted. No additional search would be required because these incorporate limitations of product claims. Further, the MPEP states that "[w]here the application as originally filed discloses the product and the process for making and/or using the product, and only claims directed to the product are presented for examination, when a product claim is found allowable, applicant may present claims directed to the process of making and/or using the patentable product by way of amendment. . . applicants are encouraged to present such process claims, preferably as dependent claims, in the application at an early stage of prosecution." MPEP §821.04.

During the telephone interview of January 13, 1998, the Examiner stated that, if the product claims were found allowable, and the method claims incorporated all of the limitations

of the product claims, then he intended to rejoin the method claims according to MPEP and Office procedure. Applicants thank Examiner Schwadron for agreeing to consider rejoining the method claims.

Applicants respectfully request withdrawal of the restriction between Groups I, IV, V, and VI, and request that these claims are joined for prosecution in a single application.

Applicants traverse the division between Groups I and III. Group I is drawn is part to polypeptides that include in their scope fusion proteins. Claims 27-34 are dependent claims on polypeptide claims, and are thus a subset of polypeptides. Further, a cursory examination of issued patents directed to polypeptides revealed issued claims to polypeptides and fusion polypeptides within the same patent. *See, for example*, U.S. Pat. 5,688,511, issued November 18, 1997 (containing, inter alia, claim 18 which recites: "The polypeptide of claim 15, further defined as a fusion protein") and U.S. Pat. 5,695,957, issued December 9, 1997, (containing, inter alia, claim 4 which recites: "A fusion protein comprising the polypeptide of claim 1").

In discussing this issue with the Examiner during the telephone interview of January 13, 1998, Examiner Schwadron graciously agreed to consider this issue. Applicants thus respectfully request that this restriction be reconsidered and withdrawn.

Applicants do not traverse the restriction between Group II and Groups I and III-VI.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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